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The Public's Right to Know and the Individual's Right of Privacy

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In 1966 Congress enacted the Freedom of Information Act to insure that the American public could find out how the executive branch of the federal government was operating.[1] The Act requires that certain matters be published in the Federal Register, that some documents be made available for public inspection and copying, and that records not covered by the first two categories be released pursuant to a request by a member of the public unless they are exempt from disclosure.[2] The Act was amended in 1974 to provide easier and quicker access to government records.[3]

The proliferation of automatic data processing equipment, the ever-increasing collection of personal information by federal agencies, and the unrestrained transfer of such information between governments and departments of government were among the concerns which led Congress to enact the Privacy Act of 1974.[4] The Privacy Act restricts the collection, maintenance, use and dissemination by federal departments and agencies of information about people. The relationship between this law and the Freedom of Information Act has been the subject of some discussion and much confusion. This article is an attempt to explain the interaction of these two laws and the effect of the Army's implementation of the Privacy Act on that interaction.

The question of the relationship between the Freedom of Information Act and the Privacy Act arises in two situations. One is that in which a member of the public requests a record which contains personal information pertaining to someone else. The second is that in which an individual seeks access to a record which contains information about himself. In order to understand the relationship between the statutes, these very different situations in which the question arises must not be confused. The first issue to be addressed will be the effect of the Privacy Act on FOIA requests from members of the public for records about others.

One category of records exempt from release to the public under the Freedom of Information Act is that consisting of "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." [5] A number of questions concerning this exemption have arisen, including such issues as whether records contained in personnel and medical files may always be withheld and what meaning should be given to the words "similar files." [6] Most courts, however, have focused on the facts of individual cases in attempting to determine whether under the circumstances release of the record in question

ERRATA

The March issue of *The Army Lawyer* (DA Pam 27–50–39) was erroneously labeled "February" due to a printer's error. Recipients should insure that this "second" February issue is re-labeled "March" in order to insure that it is not discarded as a duplicate. Material published in DA Pamphlet 27–50–39 should be cited as "The Army Lawyer, Mar. 1976, at [page number]."

The Army Lawyer

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would constitute a "clearly unwarranted invasion of personal privacy." A majority of the courts which have considered the question have concluded that it is necessary to balance the interest in disclosure against the privacy interest of the individual in order to resolve the issue.[7] This also seems to be the position taken by The Judge Advocate General.[8]

The Privacy Act of 1974 does not directly affect this balancing process or the requirement under the Freedom of Information Act to disclose records which are not determined to be exempt under any provision of that law. Rather, the Privacy Act specifically authorizes disclosure from systems of records which it covers when such disclosure is required by the FOIA.[9] The key word is "required." The language of the FOIA *requires* that certain matters be disclosed but does not *require* that anything be withheld.[10] For example, the Army has taken the position that it may release to the public even exempt records if there exists no legitimate purpose for withholding them.[11] It is conceivable that prior to enactment of the Privacy Act, a decision might have been made to release a given record even though release of that record would result in a clearly unwarranted invasion of personal privacy. At least such a decision could have been made without fear of any criminal sanction. The Privacy Act, however, establishes a criminal penalty for the willful disclosure of material the disclosure of which is prohibited by the Act.[12] In short, the Privacy Act eliminates the discretion which formerly existed, at least theoretically, to release a record which is exempt from release under the privacy exemption in the FOIA.

In view of the balancing test referred to above, it appears that in many cases the intent of the Privacy Act could be defeated by Federal agencies. For example, while release of information about an individual contained in an intelligence file to a member of the public interested in employing the individual might be a clearly unwarranted invasion of personal privacy, an argument could be made that release of that same information to another government agency would not constitute such an invasion, and hence its disclosure to that agency would be "re-

quired" under the FOIA. Since the free interagency transfer of personal information is exactly the sort of thing the Privacy Act was designed to remedy, however, it seems clear that such a position would be improper.[13]

The Army regulation implementing the Privacy Act gives examples of the kinds of personal information the release of which would not normally constitute a clearly unwarranted invasion of personal privacy. Included are the individual's "name, grade, date of birth, date of rank, salary, present and past duty assignments, future assignments which have been approved, unit or office address and telephone number, source of commission, military and civilian educational level, and promotion sequence number." [14] The subject of home addresses is dealt with in a separate provision of the regulation which prohibits their release in the absence of consent of the individual.[15] This prohibition may be waived "when circumstances of the case indicate compelling and overriding interests deemed sufficient to outweigh privacy protection considerations." [16] The regulation goes on to point out that commercial solicitation does not generally constitute such an interest.[17] This position seems consistent with the cases which have interpreted the Freedom of Information Act.[18] It is important to recognize that the regulation discusses only a few specific problem areas. There are many records containing personal information the disclosure of which would not constitute a "clearly unwarranted" invasion of personal privacy. This question must always be resolved on a case-by-case basis, keeping in mind the purposes of the FOIA.

When an individual requests disclosure of records pertaining to himself, a number of questions arise. What if the record he seeks is exempt from disclosure under only one of the laws? Does it make any difference which law he relies upon in his request? How quickly must the agency respond to the request? To whom will he appeal a denial of his request?

The Privacy Act specially defines the phrase "system of records" and requires that individuals be given access to most information about them contained in such systems.[19] A system of records is "a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol or other identifying particular assigned to the individual." [20] Records contained in systems of records are also "records" within the meaning of the Freedom of Information Act. It appears, that an individual may request disclosure of a record pertaining to him under either Act if it is contained in a system of records. If, however, the record is one which pertains to him but is not contained in a system of records as defined in the Privacy Act, that Act simply does not apply to it.

The Army has taken the position that a request by an individual for access to a record pertaining to him and contained in a system of records will be processed in accordance with Army Regulation 340-21 (which implements the Privacy Act) no matter what law the individual cites as the basis for his request.[21] This means that a decision on such a request need not be made for 30 working days as opposed to the 10 working days allowed under the Freedom of Information Act. Similarly an appeal need not be acted upon for 30 working days as opposed to the 20 working days allowed for decisions on FOIA appeals.[22] In addition, a fee may be charged only for the cost of copying the record.[23]

The Army's position is for the most part consistent with guidance issued by the Office of Management and Budget (the agency charged under the Privacy Act with providing guidance to and oversight of the other agencies) after the promulgation of the Army regulation. The OMB guidance states:

> It is our view that agencies should treat requests by individuals for information pertaining to themselves which specify either the FOIA or the Privacy Act (but not both) under the procedures established pursuant to the Act specified in the request. When the request specifies, and may be processed under, both the FOIA and the Privacy Act, or specifies neither Act, Privacy Act procedures should be employed. The individual should be advised, however, that the agency has elected to use Privacy Act procedures, of the existence and the general ef-

fect of the Freedom of Information Act, and of the differences, if any, between the agency's procedures under the two Acts (e.g., fees, time limits, access and appeals).[24]

The only real disadvantage to a requester who specifies only the FOIA under the Army's procedure as compared with the foregoing guidance is the longer time period which the Army has to make a decision on his request. While the OMB guidance is not phrased in mandatory terms, every effort should be made to make a decision on requests which specify only the Freedom of Information Act as their basis within the time periods allowed under that Act.

The final problem for discussion is the effect of the interaction of the FOIA and the Privacy Act on the ability of an individual to obtain records about himself. What if a record contained in a "system of records" is exempt from release under the Freedom of Information Act? On the other hand, suppose a record is exempt from access under the Privacy Act but would be available under the Freedom of Information Act.

Congress addressed the first of these situations and prohibited agencies from relying on exemptions contained in the Freedom of Information Act to withhold a record from an individual which is otherwise accessible to him under the Privacy Act.[25] Both the OMB guidelines and the Army's implementation of the Privacy Act recognize this prohibition. Congress did not specifically address the question of whether the Privacy Act might result in the denial of access to a record which would be available under the Freedom of Information Act. It seems clear, however, that the intent of the Privacy Act is to provide greater access to personal information contained in government records, and that the exemptions under the Act should not be read to deny access to records which would be available under the FOIA. This is recognized in the OMB supplementary guidance:

> In some instances under the Privacy Act an agency may (1) exempt a system of records (or a portion thereof) from access by individuals in accordance with the general or specific exemptions (subsection (j) or (k)); or (2) deny a request for access to records compiled in reasonable anticipation of a civil action or proceeding or archival records (subsection (d) (5) or (1)). In a few instances the exemption from disclosure under the Privacy Act may be interpreted to be broader than the Freedom of Information Act (5 U.S.C. 552). In such instances the Privacy Act should not be used to deny access to information about an individual which would otherwise have been *required* to be disclosed to that individual under the Freedom of Information Act.[26]

Army Regulation 340–21 also recognizes the spirit of the Privacy Act and permits denial of access to a record "only if it was compiled in reasonable anticipation of a civil action or proceeding, or if—

(1) It has been properly exempted from the disclosure provisions of the Privacy Act, in accordance with chapter 7; and

(2) It would not otherwise be required to be disclosed under the Freedom of Information Act (AR 340–17); and

(3) There exists a significant and legitimate governmental purpose for doing so." [27]

The Army regulation inserts the "legitimate purpose" requirement which is included in the Army's implementation of the Freedom of Information Act,[28] so even if a record about an individual is exempt from release to him under both laws, he must be given access to it unless a "significant and legitimate governmental purpose" requires denial of access. The only seeming inconsistency between the OMB guidance and the Army regulation is the apparent authority under the regulation to deny access to records compiled in reasonable anticipation of a civil action or proceeding even if such records are available under the Freedom of Information Act. This inconsistency is more apparent than real, however, because such records are, for the most part, exempt from release under the FOIA except to the extent that they are available through the discovery process.[29]

The only portion of the Army regulation's access provisions which may be inconsistent with the requirements of the Privacy Act is the following:

> If a record contains both releasable and exempt information, the releasable portions will be segregated and made available. For example, to protect the personal privacy of other persons who may identified in a record, an extract or copy will be made, deleting only that information pertaining to those persons which would be denied to the requesting individual under AR 340–17.[30]

The Freedom of Information Act requires that nonexempt portions of records be segregated and released to the requester.[31] The Privacy Act contains no such provision—it contemplates only the exemption of "systems of records" by the head of an agency.[32] To the extent that the Army regulation purports to authorize the denial of access to a record which is not exempt under the Privacy Act, it is inconsistent with its own provisions, which were discussed earlier, as well as the OMB supplementary guidance. In short, an individual may not be denied access to a record about him which is contained in a system of records unless the record is exempt from release under both laws and a "significant and legitimate governmental purpose" exists for withholding it.

The foregoing discussion of the relationship between the Freedom of Information Act and the Privacy Act suggests that the laws as implemented complement rather than contradict one another. If it is kept in mind that the Privacy Act was not intended to change the disclosure requirements of the Freedom of Information Act, and that the FOIA must not be used to frustrate an individual's access to his own records, resolution of apparent conflicts between the laws will be less difficult. Hopefully, the result will be the preservation of both the public's right to know and the individual's right of privacy.

Footnotes

1. Act of Sept. 6, 1966, Pub. L. No. 89–554, 80 Stat. 383, *as amended*, Act of June 5, 1967, Pub. L. No. 90–23, § 1, 81 Stat. 54 (codified at 5 U.S.C. § 552 (1970)).
2. 5 U.S.C. § 552 (1970), *as amended*, 5 U.S.C.A. § 552 (Supp 1976) [hereinafter cited as 5 U.S.C.A. § 552].
3. Act of Nov. 21, 1974, Pub. L. No. 93–502, §§ 1–3, 88 Stat. 1561.
4. Act of Dec. 31, 1974, Pub. L. No. 93–579, 88 Stat. 1896 (§ 3 codified at 5 U.S.C.A. § 552a (Supp. 1976)).
5. 5 U.S.C. § 552(b) (6) (1970).
6. *See* Project, *Government Information and the Rights of Citizens*, 73 MICH. L. REV. 971, 1079–80 (1975): Note, *The Freedom of Information Act: A Seven-Year Assessment*, 74 COLUM. L. REV. 895, 953–54 (1974).
7. *See, e.g.*, Wine Hobby USA, Inc. v. IRS, 502 F.2d 133 (3d Cir. 1974); Getman v. NLRB, 450 F.2d 670 (D.C. Cir. 1971). It is possible that the case of Rose v. Dep't of the Air Force, [495 F.2d 261 (2d Cir. 1974), *cert. granted*, 420 U.S. 923 (1975)], awaiting decision by the Supreme Court will shed some light on the question of how to make the determination as to whether disclosure of a given record would constitute a clearly unwarranted invasion of personal privacy.
8. *See, e.g.*, DAJA–AL 1975/4965, 31 Oct. 1975.
9. 5 U.S.C.A. § 552a(b) (2).
10. *See* Charles River Park "A", Inc. v. Dept. of Housing and Urban Development, 519 F.2d 935 (D.C. Cir. 1975). *Contra*, Westinghouse Elec. Corp. v. Schlesinger, 392 F. Supp. 1246 (E.D. Va. 1974).
11. Army Reg. No. 340–17, para. 2–1*a* (24 Jan 1975).
12. 5 U.S.C.A. § 552a(i).
13. *See* S. Rep. No. 93–1183, 93d Cong., 2d Sess. (1974).
14. Army Reg. No. 340–21, para 3–2*b* (27 Aug 1975).
15. Army Reg. No. 340–21, para. 3–5 (27 Aug 1975).
16. *Id.* at 3–5*b*.
17. *Id.*
18. *See, e.g.*, Wine Hobby USA, Inc. v. IRS, 502 F.2d 133 (3d Cir. 1974).
19. 5 U.S.C.A. § 552a(d).
20. 5 U.S.C.A. § 552a(a) (5).
21. Army Reg. No. 340–21, para. 2–3*a* (27 Aug 1975).
22. *See* 5 U.S.C.A. § 552(a) (6). The Privacy Act imposes no time limits upon action by an agency on an individual's request for access to his records. 5 U.S.C.A. § 522a(d) (1). The Army, however, has imposed time limits in its regulation. Army Reg. No. 340–21. Para. 2–5 (27 Aug 1975).
23. 5 U.S.C.A. § 552a(f) (5). Under the Freedom of Information Act the requester may be charged fees covering both search for and reproduction of records. 5 U.S.C.A. § 552(a) (4) (A).
24. OMB Supplementary Guidance, Implementation of the Privacy Act of 1974, 40 Fed. Reg. 56741 at 56743 (1975) [hereinafter cited as OMB Supplementary Guidance].
25. 5. U.S.C.A. § 552a(q).
26. OMB Supplementary Guidance, 40 Fed. Req. at 56742 (emphasis in original).
27. Army Reg. No. 340–21, para. 2–6*b* (27 Aug 1975).
28. Army Reg. No. 340–17, para. 2–1*a* (24 Jan 1975).
29. The fifth exemption in the Freedom of Information Act pertains to matters that are "inter-agency or intra-agency memorandums or letters which would not be available by law to a party . . . in litigation with the agency." 5 U.S.C. § 552(b) (5) (1970). This provision has generally been read to protect litigation files to the extent they would not be routinely made available through the discovery process. *See* NLRB v. Sears, Roebuck, & Co., 421 U.S. 132 (1975); Brockway v.

Dep't of the Air Force, 518 F.2d 1184 (8th Cir. 1975).
30. Army Reg. No. 340-21, para. 2-6*d* (27 Aug 1975).
31. 5 U.S.C.A. § 552(b).
32. 5 U.S.C.A. § 552a(j) & (k).

JUDICIARY NOTES

From: U.S. Army Judiciary

Recurring Errors And Irregularities

1. *February 1976 Corrections by A.C.M.R. of Initial Promulgating Orders:*

a. Failing to indicate that trial was by military judge alone—3 cases.

b. Failing to set forth the proper words or figures in the specification of a charge—3 cases.

2. *SJA office should take note of the following recurring error appearing in supplementary promulgating orders:*

When the A.C.M.R. affirms a sentence in which "the application of forfeitures is deferred until the sentence is ordered into execution" (Article 57 (a), UCMJ; paragraph 88*d*(3), MCM, 1969 (Rev.)), the effective date of deferment is the date of the convening authority's action, *not* the date of the A.C.M.R. decision.

MONTHLY AVERAGE COURT-MARTIAL RATES PER 1000 AVERAGE STRENGTH OCTOBER–DECEMBER 1975

	Summary CM	*Special CM BCD*	*Special CM NON-BCD*	*General CM*
ARMY-WIDE	.15	.10	.61	.25
CONUS Army commands	.13	.11	.62	.28
OVERSEAS Army commands	.18	.09	.58	.20
USAREUR and Seventh Army commands	.20	.09	.56	.25
Eighth U.S. Army	.14	.11	.59	—
U.S. Army Japan	—	—	—	—
Units in Okinawa	.29	—	—	.20
Units in Hawaii	.08	.02	.70	.06
Units in Thailand	.13	—	.26	—
Units in Alaska	.17	.17	1.01	.03
Units in Panama/ Canal Zone	—	—	1.01	.37

Note: Above figures represent geographical areas under the jurisdiction of the commands and are based on average number of personnel on duty within those areas.

NON-JUDICIAL PUNISHMENT MONTHLY AVERAGE AND QUARTERLY RATES PER 1000 AVERAGE STRENGTH OCTOBER–DECEMBER 1975

	Monthly Average Rates	*Quarterly Rates*
ARMY-WIDE	15.24	45.72
CONUS Army Commands	15.57	46.72
OVERSEAS Army Commands	14.63	43.89
USAREUR and Seventh Army commands	14.38	43.13
Eighth U.S. Army	19.70	59.11
U.S. Army Japan	3.95	11.86
Units in Okinawa	2.54	7.62
Units in Hawaii	16.01	48.03
Units in Thailand	3.83	11.50
Units in Alaska	8.78	26.33
Units in Panama/ Canal Zone	16.66	49.97

Note: Above figures represent geographical areas under the jurisdiction of the commands and are based on average number of personnel on duty within those areas.

THE CONTINUING PROBLEMS IN CASE PROCESSING

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The processing time periods which press the prosecution in both pre and post-trial situations continues to result in numerous cases being decided at the appellate level on issues of speedy

trial and post-trial delay. It should be evident to all prosecutors at this point that the burden is indeed heavy in the processing period situations to evidence that compliance has been made with both the pretrial and post-trial standards emanating from the decisions in *United States v. Burton* [1] and *Dunlap v. Convening Authority.*[2] In light of the continuing decisions against the prosecution on these issues being rendered at the appellate level, the first rule that must be followed by trial counsel in the field is a recognition that it is highly unlikely a delay that exceeds either *Burton* or *Dunlap* can be justified. Secondly, if it is to be justified, that justification must be clear and in the record. An examination of recent decisions evidences the need for trial counsel to be constantly conscious of the burdens placed on him in the processing of cases.

In the case of *United States v. First,*[3] The Court of Military Review was faced with a pretrial processing case in which confinement totaled 101 days. The trial defense counsel, early on in the case, made a specific request in writing for a speedy trial or dismissal of the charges. The case had been set for trial on the 84th day of confinement, but was removed from the docket the day before trial because of a new offense (the obstruction of justice) which arose at that time. The Government contended that the intervention of this offense was an extraordinary circumstance which justified the delay to 101 days. The court found no justification for the *Burton* violation based on the intervening offense and cited Court of Military Appeals decisions indicating this was not a circumstance where the intervening offense would justify the pretrial processing time exceeding the 90 days under *Burton.*

This decision is in line with *United States v. Ward* [4] where the Court of Military Appeals recognized that additional charges must be treated separately for purposes of complying with *Burton.* That decision also recognized that while Manual paragraph 31*g* indicates a desire that all charges be tried together, that provision is subservient to Article 10 of the Code which requires that charges be brought within an appropriate time limit which is now the 90 days under *Burton.* As indicated in the *Ward* decision, there may be circumstances in which an intervening offense will constitute an extraordinary circumstance to justify a delay beyond 90 days as to the original charges. However, what circumstances give rise to this occasion are not clear and may very well be severely restricted in number. The Court of Military Appeals indicated in their decision in *United States v. Johnson* that the Government was not accountable for any delay that occurred due to an accused who, relieved from confinement, went AWOL, "since the Government, of necessity under those circumstances, was unable to process the charges against him until his return." [5] A reading of this example indicates that a delay based on intervening charges which will justify a pretrial period exceeding 90 days as to original charges results where the new offense is *the* reason that the trial must be delayed.

The Court of Military Appeals has already indicated that docketing delays are charged to the prosecution, even if the military judge is in charge of overseeing that docket, since the military judge must wait for referral action by the convening authority before a docket can be arranged.[6] Additionally, the fact the defense acquiesces in a trial date does not constitute a delay which will allow the prosecution to overcome the burden in *Burton.*[7] The Court of Military Review has recently indicated that a motion to sever by a defendant in a situation where that motion should have been anticipated by the prosecution will not justify reliance on the severance as a reason to exceed 90 days.[8]

It should be clear from these cases that it is the prosecution's burden to establish on the record a justifiable reason why the prosecution could not go forward with the trial within 90 days.[9] Any delay by the defense which the prosecution wishes to point to as a justification for exceeding the 90 day *Burton* rule must be established on the record as *the* reason for the delay beyond 90 days. As the Court of Military Appeals has recognized, the burden is on the prosecution to proceed with the case and the defense need do nothing to speed a case to trial.[10]

Recent cases also indicate the prosecution must be more fully aware of the second facet of the *Burton* rule, that is, where the defense de-

mands an immediate trial. The Court of Military Appeals has reaffirmed that second facet of the rule and indicated that it is up to the prosecution to respond to such a request for an immediate trial by either proceeding immediately or establishing adequate cause for any further delay.[11] In those cases where the defense demands trial, the Government should respond in writing with the reason why it cannot proceed to trial, or respond with a trial date for the immediate future. The failure to do so could result in a dismissal of the charges, even though dismissal is not an automatic remedy resulting from the failure to comply with a demand.[12]

If at trial the defense moves for a dismissal or any other remedy because a demand for speedy trial has not been met, the prosecution should possess written responses to all defense demands which may then be incorporated into the record. The continuing problem that exists in the pretrial processing of cases in regard to the *Burton* rule continues to be a failure of the prosecution to make a record as to what occurred to justify any inordinate delays. In many cases the reason for this may well be that there is no justifiable reason for exceeding the *Burton* rule. Once caught in that dilemma, there is little that can be accomplished on appeal where a chronology indicates numerous gaps in the processing of the case that cannot be explained. It is for this reason that it is absolutely essential that a trial counsel keep a daily record of what action is being taken in a case, for in doing so not only does counsel preserve that evidence necessary to meet the burden established under *Burton*, but he also is forced to keep a daily accounting of whether or not a case is proceeding, and thus becomes aware of potential gaps in a chronology before they come to fruition.

The second area in the processing problem is the post-trial *Dunlap* rule. In a recent decision by the Court of Military Review in the case of *United States v. Young*,[13] that court dismissed the case where there was a 100 day post-trial processing period. There had been a request by the trial defense counsel that the SJA Review discuss a clemency petition which would be submitted during the preparation period of the review. Fourteen days elapsed between the date the Government was notified that the petition would be submitted and the day that it was received. The Government's attempt on appeal to deduct this 14 day period from the 100 day post-trial processing time was not accepted by that court.

The court recognized that during the time the clemency petition was being prepared and sent the Government was nevertheless bound to begin preparation of the review, as in fact it had done. Thus, the 14 days could not be deducted since preparation of the petition did not impinge on the Government's ability to get the review prepared. In light of the fact that the Government could have worked on the review without delay while awaiting the petition and since the record indicated that in fact occurred, the court found insufficient evidence from which to deduce that even 10 days of this period could be attributed to the defense as having delayed post-trial processing.

Furthermore, the court found there were other time periods which were not accounted for in the post-trial processing stages. One of those included 23 days spent in sending the record to the military judge for authentication when that judge was then serving at another post. The court noted that this time period could have been substantially decreased by employing one of the other individuals listed in Article 54 for the purposes of authentication.

This decision by the Court of Military Review raises two important matters of concern for the prosecution. First, it must again be remembered that if there is any post-trial period which the prosecution considers chargeable as a defense requested delay, that request must be written and attached to the record. The request must be unambiguous and that delay must in fact be *the* reason for non-compliance with the *Dunlap* rule. Secondly, there is a continuing problem of time accountability where records for authentication are sent to judges no longer located at the place of the trial. The Court of Military Review in *Young* indicates that it feels the trial counsel or a member of the court should authenticate the record where the judge is unavailable, as provided for in Article 54. This issue is presently before the Court of Military

Appeals in the case of *United States v. Cruz-Rijos.*[14]

The Government's position in that case is that authentication of the record in a timely fashion is to everyone's benefit and when a record has been prepared for authentication, such should be accomplished as quickly as possible. If a military judge is not available for whatever reason, excepting matters such as being out of the office for an afternoon or a day, the trial counsel is justified in authenticating the record at that time.

Support for such action is found in the memorandum to military judges, number 82, paragraph c, which indicates that if a trial judge will be unavailable to authenticate the record for more than 48 hours after completion by the court reporter, then the trial counsel should act to authenticate such a record. To require that a record be sent to a military judge at another post or that authentication be delayed pending return of the judge from leave or duty elsewhere, is not required under Article 54 and simply raises further problems in the already complicated post-trial period. Whether or not the reasoning of the Government in *Cruz-Rijos* will be upheld remains to be seen, but trial counsel should be aware that the decision is pending before the Court of Military Appeals and that the Court of Military Review has indicated such action is justified in their decision in *Young*.

In a similar situation, where a record is sent to another post for final action, Chief Judge Fletcher has indicated that such may give rise to an extraordinary circumstance under the *Dunlap* rule.[15] However, it must be indicated on the record that the disqualification of one convening authority and the necessity of sending the record to a different post for final action is in fact *the* reason for exceeding *Dunlap*. Once again, what surfaces from this concurring opinion is the same reasoning that has come through in the pretrial processing cases, that is, that unusual circumstances *in and of themselves* do not rise to the extraordinary circumstances exception under *Dunlap* or *Burton*. Rather, such circumstances must be *the* reason for the delay which results in the violation of the *Dunlap* or *Burton* rule before the prosecution may claim the exception.

Finally, the problems surrounding the application of *United States v. Goode* [16] continue to plague trial counsel as attempts are made to fulfill the right of the defense to respond to the SJA review. Two recent decisions of major importance come from the Court of Military Review in *United States v. Miller,*[17] and *United States v. Bates* [18] in which the court ruled that the service of the SJA review must be made on *the* trial defense counsel, unless there is established an attorney/client relationship between the appellant and a different counsel who acts to comply with *Goode*. What these decisions indicate is that service of the SJA review on a defense counsel other than the counsel which represented the accused at trial or a counsel who has entered into an attorney/client relationship with the appellant subsequent to trial, does not satisfy the *Goode* mandate. These decisions are in direct opposition to an earlier decision by a different panel of the Court of Military Review in *United States v. Iverson.*[19]

The Government is attempting a certification of this issue to the Court of Military Appeals and it is clear that the split leaves considerable problems to be resolved by staff judge advocates who must determine who will be served with the review to comply with *Goode*. Obviously, to avoid any potential reversal an SJA is well advised, where at all possible, to serve the review on *the* trial defense counsel. Where that is impossible, every effort should be made to insure that an attorney/client relationship exists between the accused and the counsel who is served with the review. The court indicated in *Miller* that " 'to bind the accused, we feel that there must be some semblance of acceptance on his part, as representation by total strangers is neither desirable nor fair. . . .' " The court noted that "military justice practice does not permit a system of substitution of appointed counsel at the whim of the convening authority." Thus, just who may be served with the *Goode* review remains in issue, and the staff judge advocates must be aware of the potential problems on appeal if the review is given to one other than the trial defense counsel or a counsel who has not entered into an attorney/client relationship with the appellant. The final resolution of this issue remains for the future.

In conjunction with the *Goode* mandate, the decision in *Miller*, should it stand, obviously raises further complications where the final action is being taken at a post other than where the trial occurred, where the trial defense counsel is no longer at the trial post location or where a new attorney/client relationship must be established. Who will be accountable for these time periods when *Dunlap* arises? While that question is unanswered, it seems clear that once again the Government must make a record which shows no gaps in the post-trial processing period and establishes that the unusual circumstances were *the* reasons for non-compliance with *Dunlap*. Until these questions are answered, it must be remembered that a *Dunlap* violation will result in dismissal, while a *Goode* error requires a new review and action. That ultimate result must weigh in the post-trial handling of a case.

In conclusion, the prosecution indeed faces a heavy burden under both *Burton* and *Dunlap*. There must be a constant control of each and every case proceeding through the pre- and post-trial processing stages and it is to no avail to have certain periods of defense requested delays where there are other periods in which the prosecution has not moved on a case. The prosecution's duty is not only to establish that there were defense delays, but that those delays were in fact responsible for non-compliance with *Burton* and/or *Dunlap*. All too often processing gaps are not realized until a point in the proceedings when it is too late to correct them. For this reason, the constant vigilance over a case in the pre and post-trial processing stages is an absolute necessity to insure that cases will not be dismissed or other remedies taken at the appellate level when the Government is unable to explain why the *Burton* or *Dunlap* rule was not met. The prosecution must take a hard line on these issues at the trial level and proceed regardless of *off the record* requests by the defense for delays. If the defense desires a delay, that must be in writing and it must be specifically a request for a delay. Only then can the prosecution hope to avoid the continuing problems which show up at the appellate level in light of *Dunlap* and *Burton*.

FOOTNOTES

1. United States v. Burton, 21 U.S.C.M.A. 112, 44 C.M.R. 166 (1971).
2. Dunlap v. Convening Authority, 23 U.S.C.M.A. 135, 48 C.M.R. 751 (1974).
3. United States v. First, No. 433692 (ACMR 27 February 1976).
4. United States v. Ward, 23 U.S.C.M.A. 391, 50 C.M.R. 273 (1975).
5. United States v. Johnson, 23 U.S.C.M.A. 397, 401, 50 C.M.R. 279, 283, n. 5 (1975).
6. United States v. Wolzok, 23 U.S.C.M.A. 492, 50 C.M.R. 572 (1975).
7. *Id.*
8. United States v. Jones, No. 432402 (ACMR 5 February 1976).
9. United States v. Young, 23 U.S.C.M.A. 471, 50 C.M.R. 490 (1975).
10. United States v. McClain, 23 U.S.C.M.A. 453, 50 C.M.R. 472 (1975).
11. United States v. Johnson, *supra* note 5.
12. *Id.* at 284; United States v. Gordon, No. 11193 (ACMR 20 February 1976).
13. United States v. Young, No. 433933 (ACMR 27 February 1976).
14. United States v. Cruz-Rijos, No. 30,908 (argued 25 February 1976).
15. Bouler v. United States, No. 75-66 (27 February 1976).
16. United States v. Goode, 23 U.S.C.M.A. 367, 50 C.M.R. 1 (1975).
17. United States v. Miller, No. 11424 (ACMR 27 February 1976).
18. United States v. Bates, No. 433375 (ACMR 8 March 1976).
19. United States v. Iverson, No. 433471 (ACMR 31 December 1975).

JAG School Notes

1. JAG School to Change Commandants. The Judge Advocate General has designated Colonel Barney L. Brannen, Jr. as the next Commandant of The Judge Advocate General's School. Colonel Brannen, now serving as the Director of the Academic Department, will become the 12th Commandant on 1 July when Colonel William S. Fulton, Jr. departs for assignment to the U.S. Army Court of Military Review.

2. February issues of *The Army Lawyer*. If you think you received a double supply of February issues of *The Army Lawyer*, look again. The real February issue is DA Pamphlet 27-50-38. The March issue was inadvertently dated "February 1976" by our printer. It, however, is DA Pamphlet 27-50-39.

3. Fifth Annual Hodson Lecture. The Fifth Annual Lecture for the Kenneth J. Hodson Chair of Criminal Law was delivered at the School on 4 March 1976 by Mr. Robert M. Ervin of Tallahassee, Florida. Mr. Ervin, a trial lawyer, is Chairman of the ABA Section of Criminal Justice and an ABA member of the Board of Regents of the National College of Criminal Defense Lawyers and Public Defenders. Mr. Ervin's excellent talk to the 24th Advanced Class, 80th Basic Class, and Staff and Faculty was entitled "Contemporary Criminal Justice Problems—The Identification of Some of These and Possible Solutions." The text of Mr. Ervin's address will be published in a forthcoming issue of the *Military Law Review* and, he indicated, many of the matters raised will be covered when he participates in a National Conference on The Causes of Popular Dissatisfaction With the Administration of Justice marking the 70th anniversary of Dean Roscoe Pound's landmark speech on that subject, to be held in St. Paul beginning 7 April. Among the School's distinguished visitors for the occasion were Major General and Mrs. Kenneth J. Hodson and Brigadier General and Mrs. Joseph N. Tenhet.

4. DA Staff Speakers. In the 24th Advanced Course the Commandant's Guest Speaker Program has focused on certain staff activities in which a staff judge advocate is often closely involved. On 5 February, BG James C. Donovan, Deputy Chief of Legislative Liaison, OSA, discussed congressional relations. On 19 February, BG Joseph L. Fant, Deputy Chief of Public Information, OSA, and Deputy Chief of Information, OCSA, discussed public affairs problems and procedures. Coming soon is a briefing team from the Office of The Inspector General and Auditor General, HQDA.

5. May Courses at TJAGSA. The month of May brings seven short courses to The Judge Advocate General's School. The 66th Procurement Attorneys' Course, which begins on 26 April 1976, will close on 7 May and be followed consecutively by: The 2d Fiscal Law Course (10–12 May), the 1st Contract Costs Course (12–14 May), the 6th SJA Orientation (10–14 May), the 1st Civil Rights Course (17–20 May), the 3d Management for Military Lawyers Course (17–21 May) and the 13th Federal Labor Relations Course (24–28 May). The 24th Judge Advocate Officer Advanced Course, which will visit the U.S. Army Retraining Brigade and U.S. Disciplinary Barracks during the period 3–7 May, will also graduate on 28 May 1976.

6. 1st Civil Rights Course. During the period 17–20 May 1976, the Administrative and Civil Law Division, TJAGSA, will offer the 1st Civil Rights Course. This three and one-half day course is designed to educate military lawyers and other federal agency attorneys on the general nature of individual civil rights with emphasis on their applicability to the military community. Course material will include discussion of such areas as Open Housing and Public Accommodations; Sex Discrimination; Equal Employment Opportunity; Equality of Justice; and Free Speech in the Military.

7. 13th Federal Labor Relations Course. The 13th Federal Labor Relations Course will be offered at the School from 24–28 May 1976. The course is designed to provide attorneys who are or expect to be assigned as labor counselors with the basic principles of civilian personnel and federal labor relations law. Responsibilities of military officials when government contractors experience labor disputes will also be covered.

8. 4th Environmental Law Course. The 3d Environmental Law Course was conducted during the period of 12–15 January 1976 with approximately 100 students in attendance. Because of the increasing impact of environmental law upon military activities and facilities, it is essential that Army lawyers be well versed in the area. Accordingly, a second environmental law course will be presented this academic year.

The 4th Environmental Law Course will be conducted during the period 1–4 June 1976. The

course will parallel the instruction given at the previous course, providing attendees with an overview of environmental law with particular emphasis on the National Environmental Policy Act of 1969 and the requirements for Environmental Impact Statements.

9. Military Justice II Course. The Military Justice II Course (5F-F31) will be offered at TJAGSA from 21 June 1976 through 2 July 1976. The course will cover pretrial procedure, trial procedure, post-trial procedures, and appellate review (JA Subcourses 133, 134, 135, and 136). In addition, lectures by guest speakers will be offered in conjunction with the Criminal Trial Advocacy Course (28 June 1976 through 2 July 1976). By attending this course and Military Justice I reserve officers can complete the entire criminal law requirement for the Advanced Course. Military Justice I will be offered again in June 1977. It covers jurisdiction, common law evidence, constitutional evidence, and military crimes. (JA Subcourses 130, 131, 132, and 137.) The alternative of completing all or part of this requirement by correspondence course remains available.

10. 2d Criminal Trial Advocacy Course. The 2d Criminal Trial Advocacy Course will be offered at The Judge Advocate General's School from 28 June 1976 to 2 July 1976. The four and one-half day course will be practice oriented and will be open only to active duty JAGC officers. The course will include workshops on trial advocacy techniques in conducting voir dire; opening arguments; trial of the case on the merits (including witness preparation, new motions, trial and defense tactics, etc.); the preparation and handling of real and scientific evidence and closing arguments. The course will be highlighted by five distinguished civilian guest speakers with expertise in the areas to be covered and will conclude with an update of recent criminal law changes. A completed agenda, including the names of the guest speakers and their subjects, will be finalized in the near future.

CLE News

1. Northwestern Short Courses. Northwestern University has announced that the 19th Annual Short Course for Defense Lawyers in Criminal Cases will be held from 28 June thru 2 July and the 31st Annual Short Course for Prosecuting Attorneys will be held from 9 thru 13 August. Both courses will be held in Chicago, Illinois. These courses both include special seminars for military personnel. The attendance fee is $225 per course. Further information is available from Miss Marie D. Christiansen, Administrator, Northwestern University School of Law, 357 East Chicago Avenue, Chicago, Illinois 60611. Telephone: 312-649-8467.

2. TJAGSA Courses (Active Duty Personnel).

April 26-May 7: 66th Procurement Attorneys' Course (5F-F10).

May 10-12: 2d Fiscal Law Course (5F-F12).

May 10-14: 6th Staff Judge Advocate Orientation Course (5F-F52).

May 12-14: 1st Contract Costs Course (5F-F13).

May 17-20: 1st Civil Rights Course (5F-F24).

May 17-21: 3d Management for Military Lawyers (5F-F51).

May 24-28: 13th Federal Labor Relations Course (5F-F22).

June 1-4: 4th Environmental Law Course (5F-F27).

June 7-11: 26th Senior Officer Legal Orientation Course (5F-F22).

June 21-July 2: 1st Military Justice II Course (5F-F31).

June 21-July 2: 1st Military Administrative Law Course (5F-F20).

June 28-July 2: 2d Criminal Trial Advocacy (5F-F32).

July 11-24: USAR School BOAC Phase VI,

Procurement Law and International Law, Resident/Nonresident Instruction (5-27-C23). Active duty personnel must obtain approval to attend this course from the Academic Dept. at TJAGSA.

July 12-16: 25th Senior Officer Legal Orientation Course (5F-F1).

July 19-August 6: 15th Military Judge Course (5F-F33).

3. TJAGSA Courses (Reserve Component Personnel).

April 26-May 7: 66th Procurement Attorneys' Course (5F-F10).

June 6-19: Reserve Component Training JAGSO Teams.

June 21-July 2: 1st Military Justice II Course (5F-F31).

June 21-July 2: 1st Military Administrative Law Course (5F-F20).

July 11-16: USAR School BOAC Procurement Law Phase VI, Resident/Nonresident Instruction (5-27-C23).

July 11-24: USAR School BOAC Phase VI, Procurement Law and International Law, Resident/Nonresident Instruction and CGSC.

July 19-24: USAR School BOAC International Law Phase VI, Resident/Nonresident Instruction (5-27-C23).

MAY

2-7: Institute for Court Management Technology Workshop Program, Information Processing Systems in the Courts, Boston, MA.

3-5: University of Santa Clara School of Law-Federal Publications, Government Contract Costs, Sheraton National, Arlington, VA. Contact: Seminar Division, Federal Publications Inc, 1725 K St. NW, Washington, DC 20006. Phone: 202-337-8200.

6-7: University of San Francisco School of Law—Federal Publications, Cuneo on Government Contracts, Sheraton National, Arlington, VA. Contact: Seminar Division, Federal Publications Inc, 1725 K St. NW, Washington, DC 20006. Phone: 202-337-8200.

9-14: National College of the State Judiciary, Resident Session-Court Management Specialty, Reno, NV.

12-14: University of San Francisco School of Law—Federal Publications, Changes In Government Contracts, Sheraton National, Arlington, VA. Contact: Seminar Division, Federal Publications Inc, 1725 K St. NW, Washington, DC 20006. Phone: 202-337-8200.

13-14: ABA Section of Science and Technology, ABA National Institute on Emerging Legal Issues and Impacts of Electronic Data Processing, Waldorf-Astoria, New York, NY.

14-15: FBA, Federal Trial Practice Skills seminar, Hyatt Regency, Washington, DC.

17-20: Federal Publications, Fundamentals of Government Contracting, Las Vegas, NV. Contact: Seminar Division, Federal Publications Inc, 1725 K St. NW, Washington, DC 20006. Phone: 202-337-8200.

17-28: National College of Criminal Defense Lawyers and Public Defenders, Elements of Criminal Defense Practice, Houston, TX. Contact: National College of Criminal Defense Lawyers and Public Defenders, Bates College of Law, University of Houston, Houston, TX 77004. Phone: 713-749-2283.

18-19: Legal Education Institute, Seminar for Attorneys on the Freedom of Information and Privacy Acts. Contact: Legal Education Institute, ATTN: Training Operations, BT, US Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: 202-254-3483.

18-21: American Law Institute, Annual Meeting, The Mayflower, Washington, DC.

19-21: Fourth Biennial Meeting of the Western Conference on Civil and Criminal Problems, Wichita, KS. Contact: Dr. William G. Eckert, Laboratory, St. Francis Hospital, Wichita, KS 67214.

20-21: ABA Section of Public Contract Law, National Institute, Stouffer's National Center Hotel, Arlington, VA.

20–22: FBA Southeastern Regional Conference, Seminars on Financial Institutions, Openness in Government and Federal Trial Practice Skills, Carillon Hotel, Miami Beach, FL. Phone: Russ McKinnon at 202-638-0252.

20–23: National College of Criminal Defense Lawyers and Public Defenders, Advanced Evidence, Cleveland, OH. Contact: National College of Criminal Defense Lawyers and Public Defenders, Bates College of Law, University of Houston, Houston, TX 77004. Phone: 713-749-2283.

22: ABA Section of General Practice, Regional Roundup, Indianapolis, IN.

June

3–5: ABA Center for Administrative Justice—Environmental Law Institute, The Impact Statement Process Under NEPA, Shoreham Americana, Washington, DC.

4–5: ALI-ABA, Practice Under the New Federal Rules of Evidence, Doral Country Club, Miami, FL. Contact: Assistant Director for Courses of Study, ALI-ABA Committee on Continuing Professional Education, 4025 Chestnut St., Philadelphia, PA 19104.

4–5: ALI-ABA, Federal Criminal Practice and Procedure, Doral Country Club, Miami, FL. Contact: Assistant Director for Courses of Study, ALI-ABA Committee on Continuing Professional Education, 4025 Chestnut St., Philadelphia, PA 19104.

6–11: American Academy of Judicial Education, Graduate Program, University of Colorado, Boulder, CO. Contact: National Conference Coordinator, American Academy of Judicial Education, 539 Woodward Bldg., 1426 H St. NW, Washington, DC 20005. Phone: 202-783-5151.

7–9: Federal Publications, The Practice of Equal Employment, San Francisco, CA. Contact: Seminar Division, Federal Publications Inc, 1725 K St. NW, Washington, DC 20006. Phone: 202-337-8200.

7–10: American Federation of Information Processing Societies 1976 National Computer Conference, New York, NY. Contact: American Federation of Information Processing Societies, 210 Summit Ave., Montvale, NJ 07645. Phone: 201-391-9810.

7–25: National College of Criminal Defense Lawyers and Public Defenders, Advanced Criminal Defense Practice, Houston, TX. Contact: National College of Criminal Defense Lawyers and Public Defenders, Bates College of Law, University of Houston, Houston, TX 77004. Phone: 713-749-2283.

9–11: University of San Francisco School of Law—Federal Publications, Changes in Government Contracts, Tropicana Hotel, Las Vegas, NV. Contact: Seminar Division, Federal Publications Inc, 1725 K St. NW, Washington, DC 20006. Phone: 202-337-8200.

13–19: American Academy of Judicial Education, Appellate Judges Writing Program, University of Colorado, Boulder, CO. Contact: National Conference Coordinator, American Academy of Judicial Education, 539 Woodward Bldg., 1426 H St. NW, Washington, DC 20005. Phone: 202-783-5151.

13–2 July: National College of District Attorneys, Executive Prosecutor Course, University of Houston, Houston, TX. Contact: Registrar, National College of District Attorneys, College of Law, University of Houston, Houston, TX 77004.

13–9 July: National College of the State Judiciary, Resident Session, Reno, NV.

14–15: University of San Francisco School of Law—Federal Publications, Cuneo on Government Contracts, Holiday Inn, Golden Gateway, San Francisco, CA. Contact: Seminar Division, Federal Publications Inc, 1725 K St. NW, Washington, DC 20006. Phone: 202-337-8200.

21–23: Federal Publications, Cost Accounting Standards, Washington, DC. Contact: Seminar Division, Federal Publications Inc, 1725 K St. NW, Washington, DC 20006. Phone: 202-337-8200.

27–9 July: National College of the State Judiciary, Resident Session, Reno, NV.

28–30: University of Santa Clara School of

Law—Federal Publications, Government Contract Costs, Sheraton/Denver Airport, Denver, CO. Contact: Seminar Division, Federal Publications Inc, 1725 K St. NW, Washington, DC 20006. Phone: 202-337-8200.

28–2 July: Northwestern University, 19th Annual Short Course for Defense Lawyers In Criminal Cases, Chicago, IL. Contact: Administrator, Northwestern University School of Law, 357 East Chicago Ave., Chicago, IL 60611. Phone: 312-649-8467.

29–1 July: Legal Education Institute, Management Seminar for Chief Administrative Law Judges, Washington, DC. Contact: Legal Education Institute, ATTN: Training Operations, BT, US Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: 202-254-3483.

CLE Opportunity for Stenomask Reporters

By: SP6 Karl R. Summers, Office of the SJA, Fort Leonard Wood, Missouri

With the 71E (Court Reporter) field now open to the grade of E-9, there is a need for a continuing education system for court reporters which deals with subject matter beyond that covered in the Naval Justice School's course. Most MOS's have Noncommissioned Officer Educational Systems (NCOES) which deals primarily with that specific job, but court reporters attend the NCOES with legal clerks and others in the administration fields. Unless we search out our own source for furthering our education as court reporters, we may never have the opportunity to develop our skills and knowledge.

There are very few avenues open for Stenomask (closed microphone) reporters; as a matter of fact, I believe the Naval Justice School is the only school known to train Stenomask reporters. Recently, the four reporters at Fort Leonard Wood, Missouri were visited by the vice-president of the National Stenomask Verbatim Reporters Association (NSVRA), Mr. Don Jackson, and the Regional Representative for the State of Missouri, Mr. Jim Bouck. NSVRA, headquartered at 223 Wake Bldg., Koger Executive Center, Raleigh, North Carolina 27612 is an organization which is still in its infancy, but shows promise as a worthwhile investment for the Stenomask reporters in the service. The organization just opened its workshops and membership to military and civil service stenomask reporters.

On 15 November 1975, the reporters at Fort Leonard Wood went to a workshop/seminar held by the association at the University of Arkansas in Little Rock. The workshop was conducted by Mr. Horace Webb, the inventor of the Stenomask. The seminar covered quietness with the mask, a very important fact we unconsciously overlook while taking testimony; enunciation at various speeds; readbacks; care and maintenance of the mask; methods of storing and indexing completed cases; and marking of tapes, belts or cassettes. We did some practice at speeds up to 350 words per minute. After the seminar, the organization conducted testing for those who wanted to be certified. The test consists of 200 wpm literary dictation, 225 wpm jury charge (instructions), and 250 wpm two-voice testimony, with a minimum accuracy level of 95 percent. Once one achieves this, then he may try for the Certificate of Merit which consists of the same material, except at speeds of 225 wpm, 250 wpm, and 300 wpm, with a minimum accuracy level of 97 percent. Federal courts recognize the value of the training by giving all official reporters holding a Certificate of Merit from the NSVRA five to ten percent salary increase. I strongly recommend that all reporters check into this and that all SJA's allow their reporters to attend those seminars held in close proximity to their posts.

This is a great opportunity for continuing education in the 71E field. Not only will it make reporters in the service a highly professional group, but also will enhance uniformity Army wide in preparing records of trial. As reporters,

we've always felt we were left out of the continuing education picture for Stenomask reporters. The opportunity is here, so take advantage of it.

Criminal Law Section

From: Criminal Law Division, OTJAG

Pursuant to Article 69, UCMJ, The Judge Advocate General granted relief in a special court-martial where the defense counsel orally revoked the accused's prior written request for enlisted members. The Judge Advocate General determined that oral revocation was inoperative. *Cf. United States v. Bryant*, 23 U.S.C.M.A. 326, 49 C.M.R. 660 (1975), *United States v. Stipe*, 23 U.S.C.M.A. 11, 48 C.M.R. 267 (1974); and paragraph 4c of the 1959 Army Supplement to the 1951 *Manual for Courts-Martial*. Therefore, absent a written withdrawal personally signed by the accused, the court sitting without enlisted members lacked jurisdiction under Article 25, UCMJ.

Legal Assistance Items

By: Captain Mack Borgen and Captain Stephan Todd, Administrative and Civil Law Division, TJAGSA

1. Items of Interest.

"Legal Assistance Guide—Indochinese Refugee Resettlement Program." A 30-page booklet by this title has been prepared by the Young Lawyers Section of the American Bar Association and the U.S. Interagency Task Force. The booklet does not focus in detail on the attendant legal problems of the refugees or their sponsors. Instead, it describes the background of the Indochinese Migration and Refugee Assistance Act of 1975, the Young Lawyers Section Legal Assistance Program, and some of the cultural and sociological difficulties which have been encountered. Copies of the booklet may be obtained by writing Young Lawyers Section, ABA, 1155 East 60th Street, Chicago, Illinois 60637. Furthermore, pursuant to a grant from the Department of Health, Education and Welfare, the Young Lawyers Section is operating a toll-free "hotline" for any related questions (e.g. taxation, immigration status of refugees). The number is 800-621-0863 (Exception: In Illinois phone 312-947-8877 collect). [Cross-reference: Legal Assistance Items, *The Army Laywer*, January 1976, at 38] [Ref: Chs. 27, 41, DA Pam 27-12].

Decisions of the Comptroller General—Legal Assistance. As stated in para. 8.6(a), DA Pam 27-21, *Military Administrative Law Handbook*, "[t]he principal importance of [the decisions of the Comptroller General] to the military lawyer lies in the fact that, where money matters are concerned, 'the balances certified by the Comptroller General shall be final and conclusive upon the executive branch of the Government.' " 31 U.S.C. §44 (1970). Listed below are selected decisions which may be of particular importance to military Legal Assistance Officers. The decisions are listed by subject area. [Cross-reference: Selected Decisions from Volume 53 of the Decisions of the Comptroller General (1 July 1973-30 June 1974), are listed in *The Army Lawyer*, Sept. 1975, at 39].

Survivors' Benefits—Generally.

54 Comp. Gen. 523 (1974) (Entitlement to Survivors' Benefits—National Guard—Inactive Duty for Training).

Survivors' Benefits—Death Gratuity, 10 U.S.C. §1475, *et. seq.*

54 Comp Gen. 152 (1974) (Death

Gratuity—Effect of Pre-service Separation Agreement Between Member and Spouse — Waiver of Spouse's Rights Clause).

55 Comp Gen. ___ (B-185037, 28 Nov. 1975) (Death Gratuity — Denial — Legality of Marital Status of Claimant "Too Doubtful" — Mexican Divorce).

Survivors' Benefits — Retired Serviceman's Family Protection Plan, 10 U.S.C. §1431, *et. seq.*

54 Comp Gen. 600 (1975) (RSFPP — Termination of Annuity Because of Widow's Remarriage — Effect of Subsequent Annulment).

Survivors' Benefits — Survivor Benefit Plan, 10 U.S.C. 1447, *et. seq.*

55 Comp. Gen. 158 (1975) (SBP — Revocation and Changes of Election — "Administrative Error" — Secretarial Prerogative).

54 Comp. Gen. 838 (1975) (SBP — Effect of Widow's Remarriage After Age 60 — Inter-relation with Dependency and Indemnity Compensation (DIC) — Effect of Loss of DIC Eligibility); *cf.* 54 Comp. Gen. 709 (1975).

54 Comp. Gen. 732 (1975) (SBP — Divorce and Remarriage — Spouse's Annuity Eligibility — Two-year Marriage Rule).

54 Comp. Gen. 493 (1974) (SBP — Date of Entitlement — Rights of Deceased Beneficiary's Estate — Nonassignability).

54 Comp. Gen. 285 (1974) (SBP — Incompetent Member — Election by Court-Appointed Guardian or Committee).

54 Comp. Gen. 266 (1974) (SBP — Retired Prior to Effective Date of SBP — Subsequent Marriage — Period of Election — Exception to 10 U.S.C. 1447 (3) (A) Two-Year Rule).

54 Comp Gen. 249 (1974) (SBP — Erroneous Payments to Beneficiary — Waiver of Recovery).

54 Comp. Gen. 116 (1974) (SBP — Election — Effect of Record Correction Regarding Entitlement to Retirement Pay).

Miscellaneous.

55 Comp. Gen. ___ (B-183433, 28 Nov. 1975) (Family Law — Support of Dependents — State "Administrative Garnishment Order" — Meaning of "Legal Process" As Used in 42 U.S.C. §659 (1975)).

55 Comp. Gen. ___ (B-185030, 14 Nov. 1975) (Family Law — Definition of "Dependent" — Mother of Government Employee).

55 Comp. Gen. 177 (1975) (Family Law — Reassumption or Retention of Maiden Name By Married Women Employees — Use of "Ms" on Government Records).

54 Comp. Gen. 858 (1975) (Family Law — Government Benefits — Illegitimate Children — Consideration of Probative Evidence on Issue of Paternity).

54 Comp. Gen. 665 (1975) (Family Law — Allowances — Both Spouses Members of Armed Services).

54 Comp. Gen. 92 (1974) (Family Law — Dependents — Elimination of Annual Recertification of Dependency For "Primary Dependents" — Army); *accord,* 55 Comp. Gen. 287 (1975) (Marine Corps, Navy, Air Force).

Consumer Affairs — Residential Real Estate Settlement Costs. It was noted earlier [Legal Assistance Items, *The Army Lawyer*, Jan. 1976, at 35-36], that the Real Estate Settlement Procedures Act [12 U.S.C.A. §§ 2601-2616 (1976)] has been the subject of controversy since its enactment and that legislation had been introduced to amend the Act. Those amendment proposals found fruition in Pub. L. 94-205 (2 January 1976), 44 U.S.L.W. 4 (3 February 1976). The amendment provides, *inter alia,* that:

1. While the uniform settlement form is still required to be used, sections of the form which are not required by local use or custom may be deleted;

2. The borrower is entitled to examine the settlement form for the particular transaction, to the extent completed, at least one business day prior to the settlement date, except where impractical or where local custom and practice does not provide for advance examination; and,

3. Within the informational booklet furnished to prospective borrowers, the lender must include a good faith estimate of the settlement costs likely to be incurred.

The amendment repeals the section of the Act which required the borrower to be furnished with an itemized listing of the actual settlement costs involved in the transaction at least 12 days prior to the settlement date. Also repealed was section 121(c) of the Truth-in-Lending Act [15 U.S.C.A. § 1631(c) (1976)]. The amendment became effective on the date of enactment, but the Secretary of Housing and Urban Development may suspend up to 180 days the requirements concerning the uniform settlement form and the information booklet. [Ref: Chs. 10, 34, DA Pam 27-12.]

Articles and Publications of Interest.

Federal Income Taxation — POW/MIA. Gordon, "The Federal Income Tax Significance of being a POW or MIA," 53 *TAXES* 551 (Sept. 1975) [Ref: Chs. 41, 46, DA Pam 27-12].

U.S. Savings Bonds —Army Savings Program. Army Reg. 608-15, "Army Savings Program," 5 February 1976 [Ref: Ch. 35, DA Pam 27-12].

Litigation Division Note

From: Litigation Division, OTJAG

Use Certified Mail For Demand Letters

The Department of the Army's Postal Directorate (DAAG-MA) has authorized Recovery Judge Advocates, worldwide, to use certified mail, return receipt requested, for transmission of demand letters. This authorization is an exception to AR 340-3. The Postal Directorate has also requested that RJA's notify mail rooms of this exception to preclude future refusals of such mail.

Use of certified mail, return receipt requested, has been found to be a cost-effective method for transmission of demand letters, and its use is recommended in all recovery cases.

Postal officers having inquiries on this matter should direct them to DAAG-MA, Wash DC 20310, ATTN: Mr. Matthews. RJA's who have inquiries or problems with the use of certified mail, return receipt requested, should contact HQDA (DAJA-LTT), WASH DC 20310, ATTN: CPT Rovak.

RESERVE AFFAIRS SECTION

On Saturday, 7 February 1976, the 214th JAG Detachment, located at Fort Snelling, Minnesota, and commanded by Colonel Edward D. Clapp, JAGC, USAR, played host to area military reservists in a one-day training session conducted by Captain John S. Cooke, Criminal Law Division, TJAGSA, and Captain Thomas M. Strassburg, Administrative and Civil Law Division, TJAGSA. The program, part of the annual Reserve Components Technical Training (On-Site) Program, was coordinated with the Minnesota Chapter of the Federal Bar Association. The course was given 4.7 hours of credit by the Minnesota Board of Continuing Legal Education which requires of its licensed attorneys 45 hours of continuing legal education credit triannually. The seminar sessions were held at the Marriott Inn, Bloomington, Minnesota, and were designed to acquaint practicing lawyers, and in particular military and other federal lawyers, with current government information practices and recent developments in the crimi-

nal law field with particular emphasis on recent decisions by the Supreme Court of the United States and the U.S. Court of Military Appeals in the Fourth and Fifth Amendment areas of the Constitution. The program was enthusiastically received as evidenced by the 105 practicing attorneys and law students who attended of which over half were Judge Advocate officers of the Reserve Components. Comments from numerous participants regarding the success of the joint program were extremely favorable, in that it not only provided an opportunity for an exchange of viewpoints and ideas with non-DoD personnel, but provided for exposure of the Judge Advocate General's Corps and the School to the civilian bar as well.

Major General Lawrence H. Williams, The Assistant Judge Advocate General, addressed the luncheon gathering with pertinent remarks about the status of the military justice system as conceived and conducted within the United States military establishment. Other distinguished visitors included Brigadier General Evan L. Hultman (MOB DES Assistant Judge Advocate General for Special Assignments), Brigadier General William D. Flaskamp, Deputy Chief of Staff, Air National Guard for the State of Minnesota, and Mr. John E. Murray, President of the Minnesota Chapter of the Federal Bar Association.

Hugh J. Clausen Promoted to Brigadier General

On 2 March 1976 the President nominated Colonel Hugh J. Clausen for promotion to the grade of brigadier general. The Senate confirmed the nomination on 17 March 1976. Brigadier General Clausen was officially promoted to his present grade in a ceremony held at Fort Hood, Texas, on 19 March 1976 in connection with retreat. Music was provided by the 2d Armored Division Band, the Color Guard provided by the 720th Military Police Battalion and the 89th Military Police Group, and the Honor Guard was provided by the 13th Corps Support Command and the 6th Cavalry Brigade; A Battery, 1st of 14th Artillery was the Salute Battery. After the retreat ceremony and Honors to the Nation, Lieutenant General Robert M. Shoemaker, Commander, III Corps and Fort Hood, and Mrs. Clausen pinned on the stars as the promotion order was read. The 2d Armored Division Band then played ruffles and flourishes and the General's March, as the Salute Battery fired the traditional eleven-gun salute to welcome a new Brigadier General into the Army. The ceremony was completed as the 2d Armored Division Band played the Spirit of the First Division and the Army Song.

General Clausen was born in Mobile, Alabama, on 25 December 1926. After graduation from McGill High School and a short stint at Spring Hill College, he enlisted in the US Navy. He was discharged in June 1946 and reentered Spring Hill College. He also attended the University of Louisville. He graduated from the University of Alabama Law School in 1950, was commissioned in the US Army Reserve as a 1st Lieutenant JAGC and called to active duty in March 1951. He served as an assistant Staff Judge Advocate at Fort Bragg, N.C., and attended the 7th Basic Class, which was the first Basic Class held at the JAG School in Charlottesville. In late 6951 he was assigned to Europe and served at USAREUR Headquarters, Headquarters V Corps, and Headquarters 7th Army. He returned to CONUS in January 1955 and served as the Judge Advocate of the New Orleans Port of Embarkation, and later as the Deputy Staff Judge Advocate of the Gulf Transportation Terminal Command.

He attended the 7th Advanced Class from September 1958 to June 1959, and remained at the JAG School as an Instructor in the Military Justice Division. In 1961 he attended the US Army Language School at the Presidio of Monterey, studying the Korean language, and was then assigned to Headquarters 8th Army in Korea as the Chief of the International Affairs Division. In 1964 he returned to CONUS and served as the Judge Advocate of the Disciplinary Barracks at Fort Leavenworth, attended CGSC, and thereafter served as an Instructor in

the Department of Command until June 1968, when he was assigned to Vietnam as the Staff Judge Advocate of the 1st Infantry Division. In June 1969 he returned to CONUS and was assigned as a Plans Officer in the Plans and Operations Division, Office of the Chief of Legislative Liaison, in the Pentagon. He also served as the Chief of the Legislation Division in OCLL. He completed the Nonresident Course at the US Army War College, and the Advanced Management Program in the Graduate School of Business Administration of Harvard University in 1970. In June 1971 he became the Chief of the Military Justice Division, OTJAG, in which capacity he served until May 1972, when he became the Executive to The Judge Advocate General. In June 1973 he was assigned as the Staff Judge Advocate, III Corps and Fort Hood.

General Clausen assumed his new duties as the Chief Judge of the COMR, Chief of the US Army Judiciary, and Chief, US Army Legal Services Agency on 30 March 1976 and was sworn in as the Chief Judge by Major General Lawrence H. Williams, the Assistant Judge Advocate General, in a ceremony in the Pentagon on 6 April 1976.

His awards and decorations include: Legion of Merit with one Oak Leaf Cluster, Bronze Star Medal with three Oak Leaf Clusters, Meritorious Service Medal, Air Medal with one Oak Leaf Cluster, Army Commendation Medal with one Oak Leaf Cluster, General Staff Identification Badge, Meritorious Unit Citation, Armed Forces Honor Medal (RVN), Gallantry Cross with Palm (RVN), and Civic Action Honor Medal (RVN).

Current Materials of Interest

Articles.

Costello, *Another Visit To The Man Divided: A Justification For The Law Teacher's Schizophrenia*, 27 J. LEGAL ED. 390 (1976). Colonel John L. Costello, Jr., JAGC, RA, is a member of the U.S. Army Court of Military Review.

McGowan, *Don't Obey That Order!*, CDRS CALL, Nov.-Dec. 1975, at 13 (DA Pam 360-824). Major James J. McGowan, Jr., JAGC, is currently assigned to HQ, JT US Military Advisory Group, Thailand. Major McGowan is also the Legal Advisor to the Joint Casualty Resolution Center at U-Tapao, Royal Thai Naval Base in south Thailand.

Kuhnell, *Challenging the Military Judge for Cause*, 17 AIR FORCE L. REV. 50 (1975). Major Ludolf R. Kuhnell, USAF, is an instructor, Military Justice Division, USAF JAG School.

Bartley, *Military Law in the 1970's: The Effects of Schlesinger v. Councilman*, 17 AIR FORCE L. REV. 65 (1975). Captain H. Michael Bartley, USAF, is currently assistant SJA, 2d Combat Support Group, Barksdale Air Force Base, LA.

Cox, *Part-Time Legal Education: The Kelso Report And More*, 27 J. LEGAL ED. 473 (1976). Michael P. Cox, JAGC, USAR, is Assistant Professor of Law, University of Oklahoma.

Murray, *Publish And Perish—By Suffocation*, 27 J. LEGAL ED. 566 (1976). John F. T. Murray, COL, JAGC, (Ret.), is Professor of Law, University of Georgia School of Law.

Forsythe, *Who Guards The Guardians: Third Parties And The Law Of Armed Conflict*, 70 AM. J. INT'L LAW 41 (1976).

Case Note, *Criminal Jurisdiction—1965 Status of Forces Agreement with Republic of China—Interpretation of Articles XIV and XVII*, 70 AM. J. INT'L LAW 145 (1976).

Book.

The American Law Institute has announced the publication of the Official Draft of A MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE. This work is a statutory proposal which addresses the major processes of pretrial criminal procedure and integrates recent Supreme Court decisions. Contact: The American Law Institute, 4025 Chestnut St., Philadelphia, PA 19104. Phone: 215-387-3000.

JAGC Personnel Section

From: PP&TO, OTJAG

1. Trial Lawyer/Senior Trial Lawyer Standard. Special recognition is required to identify those judge advocates with extensive trial experience. A two-tier system will be used in designating "trial lawyers" and "senior trial lawyers". A trial lawyer with the requisite trial experience will be awarded a specialty designation of "trial lawyer" which is codified on the Officer Record Brief (DA Form 4037). The qualifications for the award of "trial lawyer" specialty designation are as follows:

A. Assignment for a minimum of 24 months primarily to trial work.

B. Completion of, or credit for, the Basic Course at TJAGSA, unless this requirement is waived by The Judge Advocate General.

C. Trial of a minimum of 75 courts-martial, of at least 25 thereof being general courts-martial and at least 10 thereof being contested.

D. Staff and Command Judge Advocates, and Senior JAGC officers in each judge advocate office will forward to PP&TO, OTJAG, the names and qualifications of eligible officers under their supervision.

E. Award will be made by PP&TO and entered on the Officer Record Brief.

After acquisition of the requisite trial experience, prosecution and defense counsels will be designated as a "senior trial lawyer" by a certificate signed by The Judge Advocate General. The qualifications for this designation have been revised and are as follows:

A. Five years active duty as a judge advocate, at least three of which are in active trial practice.

B. Participation as trial or defense counsel in at least 120 cases, of which at least 60 are GCM or BCD SPCM and at least 30 are contested cases.

C. Recommendation for the designation to PP&TO, OTJAG by the officer's current SJA who must confirm that the experience criteria are satisfied.

D. Evaluation by two GCM judges before whom the officer has practiced that he is "superior" or "excellent" in all the qualities shown at the attached form. These evaluations should be secured by the SJA.

E. Certificates heretofore issued for senior trial lawyers and designation of trial lawyer by the staff judge advocate under the previous criteria are unaffected.

Establishing an evolutionary two step program is necessary to identify our experienced practitioners for Army wide utilization and to provide recognition of deserving counsel who spend an extended period of time in the courtroom.

A copy of the form is attached at the page immediately following the end of the JAGC Personnel Section and should be reproduced locally.

2. Award of Judge Advocate Specialty Designations. The following instructions for the award of judge advocate specialty designations are set forth for the benefit of the entire Judge Advocate General's Corps. The initial award of the specialty designations was completed in January 1975 and codified on the Officer Record Brief (DA Form 4037). Awards will be made for 1976 of specialty designations for all experience acquired over past years.

Qualified JAGC officers will be awarded legal specialty designations as a personnel management tool. The specialty designations are: Procurement Specialist; Appellate Lawyer; Trial Lawyer; Staff Judge Advocate; Post or Command Judge Advocate; Patent Lawyer; Claims Specialist; International Law Specialist; Trial or Appellate Judge; Litigation Specialist; Labor Law Specialist; Administrative Law Specialist; Legal Assistance Specialist; Instructor of Law; Judge, SPCM Trial; and Magistrate.

Award will made by PP&TO and entered on the Officer Record Brief, based on the standards set forth below. Entries will not be made on personnel qualification records maintained by military personnel officers in the field.

An officer may be awarded more than one specialty. The officer need not be presently working in the specialty to be awarded the designation for it.

Staff and command judge advocates and senior JAGC officers in each judge advocate office will forward to PP&TO *by 15 May 1976* the names and qualifications of eligible officers under their supervision for the judge advocate specialty designation listed below.

A. Procurement Specialist: Completion of, or credit for, both Basic and Advanced courses at TJAGSA, unless this requirement is waived by The Judge Advocate General. Familiarity with all types of appropriated and nonappropriated fund procurement and contracts. Experience in not less than two major procurement assignments, one involving procurement law advice at the level of contracting officer or above, or performance of the supervisory duties of, and occupancy of the position of, a senior trial attorney practicing before the Armed Services Board of Contract Appeals, or appointment as judge of the Armed Services Board of Contract Appeals. Successful completion of a master's program in procurement law may be substituted for one of the major procurement assignments.

B. Appellate Lawyer: Completion of, or credit for, both Basic and Advanced courses at TJAGSA, unless this requirement is waived by The Judge Advocate General. At least five years' experience in criminal law, at least two years of which were spent as a briefing attorney in one of the appellate divisions or at least one year of which was spent as a branch chief, executive officer or chief of one of the appellate divisions. Considered capable of holding the position of branch chief in one of the appellate divisions by the chief of that division.

C. Staff Judge Advocate: Service as staff judge advocate, for at least one year, for an active general court-martial jurisdiction. Attendance at or credit for, both the Basic and Advanced courses at TJAGSA, unless this requirement is waived by The Judge Advocate General. Active duty JAGC service of at least five years.

D. Post or Command Judge Advocate: Service as the senior judge advocate in a post or command, in such jurisdiction as may be approved by The Judge Advocate General. Attendance at, or credit for, the Basic course at TJAGSA, unless this requirement is waived by The Judge Advocate General. Active duty JAGC service of at least two years.

E. Trial Lawyer: Assignment for a minimum of 24 months primarily to trial work. Completion of, or credit for, the Basic course at TJAGSA, unless this requirement is waived by The Judge Advocate General. Trial of a minimum of 75 courts-martial, or at least 25 thereof being general courts-martial and at least 10 thereof being contested.

F. Patent Lawyer: Admission to practice before the U.S. Patent and Trademark Office and at least two years' experience in the Patents Division, OTJAG, or experience deemed equivalent by The Judge Advocate General. Completion of the Basic course at TJAGSA, unless waived by The Judge Advocate General.

G. Claims Specialist: At least five years' experience in claims duties, one year of which was with the command claims service of a major overseas command or equivalent command, or the U.S. Army Claims Service or Tort Branch (Litigation Division, OTJAG), or as an instructor in civil law (claims); or service for three years with the U.S. Army Claims Service, or Tort Branch, Litigation Division. Completion of, or credit for, the Basic course at TJAGSA.

H. International Law Specialist: Completion of the Basic and Advanced courses at TJAGSA, or credit therefor, unless this requirement is waived by The Judge Advocate General. Completion of at least two years of service during which the officer's principal duty

was providing legal advice on international law. This would include duty in an international affairs division of a major overseas headquarters, duty in the IA Division, OTJAG, or duty for two or more years teaching international law at TJAGSA.

I. Judge, GCM Trial and Appellate: Completion of a total of at least eight years of active JAGC service. Completion of, or credit for, both Basic and Advanced courses at TJAGSA and Military Judges' course, unless this requirement is waived by The Judge Advocate General. At least five years service during which the principal duty was processing of criminal cases either as counsel, appellate counsel, court commissioner, chief of criminal law, TJAGSA, action officer in criminal law branch, OTJAG, or three years' duty as a full-time military judge, including at least two years as a full-time general court-martial judge.

J. Litigation Specialist: Completion of, or credit for, the Basic course at TJAGSA, unless this requirement is waived by The Judge Advocate General. Completion of one law school course in federal procedure or the equivalent by self-study. Complete at least one of the following TJAGSA courses: Law of Installations; Environmental Law; Federal Law Relations. At least two years' experience in the Litigation Division, OTJAG, or active participation in at least 20 cases of federal litigation, or experience, civilian or military, deemed the equivalent by The Judge Advocate General.

K. Labor Law Specialist: Completion of one law school course in labor law or the equivalent by self-study. Completion of, or credit for, the Basic course at TJAGSA, unless this requirement is waived by The Judge Advocate General. Completion of TJAGSA Law of Federal Employment course and attendance at one of DCSPER field courses (Collective Bargaining Workshop / Labor-Management Seminar / Labor-Relations Course). Active practice, full or part time, in labor law or civilian personnel law as advisor to management and technical personnel for six months. At least one appearance before an administrative law judge in a Department of Labor hearing or participation in a hearing before the U.S. Civil Service Commission or U.S. Army Civilian Appellate Review Agency.

L. Administrative Law Specialist: Completion of the Basic and Advanced courses at TJAGSA, or credit therefor, unless specifically waived by The Judge Advocate General. Completion of at least five years' service, during three years of which the principal duty was work in administrative law/military affairs at a military installation having general court-martial jurisdiction or two years as an instructor at TJAGSA in administrative law or as an action officer, team chief, or division chief in the Administrative Law Division, OTJAG.

M. Legal Assistance Specialist: Completion of the Basic and Advanced courses at TJAGSA, or credit therefor, unless specifically waived by The Judge Advocate General. Completion of at least three years' JAGC service, during at least two years of which an officer's principal duty was legal assistance.

N. Instructor of Law: Assignment for a minimum of two years as a full-time instructor in legal subjects at a U.S. Army service school or college or the U.S. Military Academy, or equivalent experience at an accredited U.S. college or university. Attendance at, or credit for, the Basic course at TJAGSA. Active duty JAGC service of at least three years.

O. Magistrate: Completion of a total of at least two years of active JAGC service. Completion of, or credit for, the Basic course at TJAGSA, unless this requirement is waived by The Judge Advocate General. Completion of at least two years' service during which the principal duty was processing criminal cases as trial or defense counsel.

P. Judge, SPCM Trial: At least two and one-half years of active JAGC service and completion of the Basic course and Military Judges' course at TJAGSA. At least two years' service during which the principal duty was processing of criminal cases as counsel, appellate counsel,

court commissioner, chief of a criminal law division of GCM jurisdiction, instructor in criminal law at TJAGSA, action officer in OTJAG, or one year duty as full-time special court-martial judge.

3. JAGC Job Vacancies. There will be vacancies for JAG Captains in the following locations on the dates indicated. The active duty obligation at each location is also indicated. Interested individuals should contact Major Michael B. Kennett at PP&TO. PP&TO's telephone numbers are Commercial 202-695-1353 and Autovon 225-1353.

A. United States Military Academy, West Point, New York. Minimum two year tour (two years field experience required) beginning 1 July 1976.

B. U.S. Army Legal Services Agency, Appellate Division, Falls Church, Virginia. Minimum one year tour beginning immediately.

C. Ft. Greely, Alaska. Minimum two year tour (accompanied) beginning 15 June 1976.

4. Short Term Extensions of Obligated Service, Regular Army and Voluntary-Indefinite Selections for JAGC Officers. The current strength of the Judge Advocate General's Corps and its directed strength at the end of fiscal year 76 (30 Jun 76) and FY 7T (30 Sep 76) will preclude short term extensions exceeding the end of the FY of the obligated service of JAGC officers having an ETS in FY 76 or FY 7T. E.g., JAGC officers with an ETS in FY 76 will be granted short term extensions only to 30 Jun 76; JAGC officers having an ETS in FY 7T will be granted short term extensions only to 30 Sep 76. JAGC officers with an ETS in FY 76 or FY 7T who desire to request retention on active duty must apply for Regular Army or Voluntary-Indefinite status. The next JAGC, RA, and Voluntary-Indefinite selection board will meet in May 1976 with the application deadline being 15 April 1976. Applications must be sent to HQDA (DAJA-PT), Washington, D.C. 20310, through the officer's staff judge advocate or commander, whichever is applicable, for indorsement. (This message was originally distributed on 24 Feb 76, Message 242109Z Feb 76, FM DA WASH DC//DAJA-PT//TO AIG 7406.)

5. Zone of Consideration for Temporary Promotion to Lieutenant Colonel, AUS. For Judge Advocate General's corps officers the primary zone of consideration will extend to include all officers serving on active duty in the grade of major with a date of rank 31 August 1969 or earlier. Special OER's should not be rendered on individuals who have been rated within the previous six month report period for the same job.

EVALUATION FOR SENIOR TRIAL LAWYER DESIGNATION

Name of Individual: _____

Current Duty Assignment: _____

1. How long have you known applicant (give dates)? _____

2. a. How long has he practiced before your court? _____

   b. Approximately how many cases has he tried before your court? _____

   c. Approximately what percentage were guilty pleas? _____

3. What is your opinion of his/her: (Check appropriate heading)

	Superior	Excellent	Average	Below Average
a. Knowledge of military criminal law				
b. Knowledge of evidence				
c. Pretrial preparation				
d. Ability in oral expression				
e. Ability in written expression				
f. Ability to think on his/her feet				
g. Ability to make a reasonable decision under courtroom pressure				
h. Maturity and common sense				
i. Ability to get along with others				
j. Military appearance				

4. Give a concise overall evaluation of the applicant as a candidate for designation as senior trial lawyer.

_____

Name and Rank

By Order of the Secretary of the Army:

Official:

PAUL T. SMITH
Major General, United States Army
The Adjutant General

FRED WEYAND
General, United States Army
Chief of Staff